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IN THE
COURT OF APPEALS OF INDIANA

EDWARD D. JONES & CO., LP, Appellant-Defendant vs. RONALD W. NICHTER, Appellee-Plaintiff,	)	No. 48A02-0603-CV-193

APPEAL FROM THE MADISON COUNTY COURT
The Honorable Thomas L. Clem, Judge
Cause No. 48E02-0507-CC-2290

October 24, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Edward D. Jones & Co., L.P. (Edward Jones), appeals the trial court's denial of its Motion to Correct Error, claiming that the trial court erred by failing to modify its Order regarding Edward Jones' liability for Appellee-Plaintiff's, Ronald W. Nichter (Nichter), potential adverse tax consequences.

We reverse and remand with instructions.

ISSUES

Edward Jones raises three issues on appeal which we restate as:

(1) Whether the Madison county court maintaining a plenary docket (trial court) erred by entering judgment that potentially exceeds its statutory authority and monetary jurisdictional limit of $10,000;

(2) Whether the trial court erred by making Edward Jones liable for Nichter's potential adverse tax consequences unrelated to disallowed business deductions; and

(3) Whether the trial court erred by imposing liability on Edward Jones for Nichter's potential adverse tax consequences for tax years 2004 through 2010 when Nichter's employment with Edward Jones ended in 2004.

FACTS AND PROCEDURAL HISTORY

Nichter was employed with Edward Jones from August 1, 1998 through November 19, 2004 as an Investment Representative in its Pendleton, Indiana office. During his employment, Nichter maintained a file folder of personal items, including a letter of recognition, continuing education certificates, and non-reimbursable business expense receipts, which he kept in a file drawer behind his administrator's desk. On November 19, 2004, Nichter was terminated while visiting Edward Jones' home office in St. Louis, Missouri. He was advised not to return to his office until further notice.

On November 27, 2004, Nichter was allowed a four-hour period to clear out his personal belongings from the office and was supervised by Edward Jones' Transitional Investment Representative, Rhonda Horack (Horack). During this four-hour period, Edward Jones granted Nichter and his nine aids full access to the office. Nichter did not retrieve his personal items from the file cabinet.[1] From time to time, Travis Callaway (Callaway), the current Investment Representative at the Pendleton office, would mail Nichter personal items he happened to find around the office. Specifically, in the summer of 2005, Edward Jones sent Nichter an envelop containing Nichter's personal business receipts.

On July 5, 2005, Nichter filed a Complaint for Replevin seeking the return of his non-reimbursable business receipts he claimed to have stored at his former office. On July 21, 2005, Edward Jones filed its Answer denying possession of Nichter's business receipts. On November 17, 2005, the trial court held a hearing. At the hearing, Nichter, appearing *pro se*, presented his case in narrative form while Edward Jones' counsel replied, also in narrative form. Nichter alleged that it would cost him $10,000 to reproduce his business receipts in the event he would be audited by the Internal Revenue

[1] Even though the record contains contradicting evidence as to whether Nichter was effectively denied access to the filing cabinet, we note Edward Jones' statement that it "stands by its position that it did not withhold any of Nichter's business receipts or documents," nevertheless, Edward Jones chooses not to "contest the trial court's finding that it denied Nichter access to his personal business receipts." (Appellant's Br. p.6 n.3).

Service. However, no witnesses were called, no cross-examination was conducted. At the end of the hearing, the trial court issued an Order directing Edward Jones to search its Pendleton office and return to Nichter any of his items found. The Order further set the case for a review hearing scheduled for January 30, 2006.

On January 27, 2006, prior to the review hearing, Edward Jones filed a Notice of Compliance with the trial court's Order and Affidavits, showing it had conducted the required search of its Pendleton office, as well as Nichter's employment file at its St. Louis home office. The Affidavits indicated that nothing was found at the St. Louis location; however, the search of the Pendleton office turned up a couple of personal letters and holiday cards, which were returned to Nichter at the review hearing.

On January 30, 2006, the scheduled review hearing was conducted off the record. At the hearing, the trial court ordered the parties to settle their differences out of the court's presence. Upon reporting to the trial court that no agreement could be reached, the trial court, without any further presentation of evidence, stated it believed Edward Jones had denied Nichter access to his business receipts at termination, and issued the following judgment: "[Edward Jones] shall be liable for any adverse tax consequences suffered by [Nichter] for tax years 2004 through 2010 or in the alternative [Edward Jones] to return such records to [Nichter]." (Appellant's App. p. 16).

On February 15, 2006, Edward Jones filed its Motion to Correct Error, asserting that the trial court erred by: (1) entering a judgment without providing Edward Jones an opportunity to fully present its case and cross-examine Nichter[2]; (2) granting Nichter relief which potentially exceeds the trial court's statutory authority and $10,000 monetary jurisdictional limit; (3) imposing liability on Edward Jones for Nichter's potentially adverse tax consequences for tax years which are unrelated to Nichter's employment with the company; and (4) making Edward Jones liable for Nichter's potential adverse tax consequences unrelated to disallowed deductions resulting from his inability to reproduce his receipts for business expenses. Two days later, on February 17, 2006, the trial court denied Edward Jones' Motion to Correct Error.

Edward Jones now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct error. *In Re Marriage of Forbes*, 792 N.E.2d 63, 67 (Ind. Ct. App. 2003), *trans. denied*. The trial court's discretion comes to us cloaked in a presumption of correctness, and the appellant has the burden of proving that the trial court abused its discretion. *Id*. A trial court has abused its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court and the reasonable inferences therefrom. *Id*. In making our determination, we may neither reweigh the evidence nor judge the credibility of the witnesses. *Id*. Instead, we look at the record to determine if: (a) the trial court abused its discretion; (b) a flagrant injustice

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[2] Edward Jones does not raise this issue on appeal.

has been done to the appellant; or (c) a very strong case for relief from the trial court's order has been made by the appellant. *Id*.

However, we note at the outset that Nichter did not file an appellee's brief in this case. Where the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Id*.

II. *Trial Court's Authority*

First, Edward Jones contends that the trial court exceeded its authority by imposing a quasi unlimited liability for any adverse tax consequences that Nichter may suffer during the tax years 2004 through 2010. Therefore, Edward Jones requests this court to cap its liability to the trial court's jurisdictional limit of $10,000. We agree.

In the instant case, the trial court clarified during the hearing that it was sitting as a county court with a plenary docket. Ind. Code § 33-30-4-1 establishing the general jurisdiction of a county court, provides, in pertinent part, as follows:

> (a) A county court has the following jurisdiction:
>
> (1) Original and concurrent jurisdiction in civil cases founded on contract or tort in which the debt or damage claimed is not more than ten thousand dollars ($10,000).

Interpreting this statute, our supreme court in *Superior Const. Co. v. Carr*, 564 N.E.2d 281, 284 (Ind. 1990) affirmed that the jurisdiction of a county division in civil tort actions should be limited to cases with claimed damages of $10,000 or less.

Furthermore, our review of the record convinces us that the trial court acknowledged its limited monetary authority. In particular, several times during the hearing, the trial court cautioned the parties that if they intended to develop the case "into a little bit more sophisticated case" by requesting the trial court to decide issues not listed in the original Complaint, they "probably [would] have to go to another jurisdiction. . . . And by jurisdiction I meant Superior Court or Circuit Court, not a County Court" (Transcript p. 42). Both parties indicated they understood but refused to transfer the case.

Accordingly, by imposing liability on Edward Jones for "any adverse tax consequences" suffered by Nichter, the trial court effectively created an unlimited liability. Because the trial court's jurisdiction is statutorily limited to $10,000, we reverse the trial court and remand with instruction to enter an Order limiting Edward Jones' potential liability to the jurisdictional limit.

III. *Disallowed Business Expenses*

Next, Edward Jones claims that the trial court erred by holding the company liable for "any adverse tax consequences suffered by [Nichter]." (Appellant's App. p. 16). Edward Jones maintains that by imposing liability for *any* adverse tax consequences, adverse tax consequences completely unrelated to Edward Jones' alleged withholding of Nichter's personal business receipts could be included. In this light, Edward Jones contends that the language of the judgment opens its liability up to tax consequences resulting from possible intentional or negligent conduct. Although Edward Jones concedes in its brief that "Nichter's potential adverse tax consequences from [the company's] alleged conduct are undisputed," it requests this court to limit its liability to tax consequences resulting from Nichter's inability to provide his business receipts to substantiate his non-reimbursed business expense deductions. (Appellant's Br. p. 11). We agree.

In his Complaint, Nichter asked for damages to recover the cost to reproduce the tax records which he claimed were withheld by Edward Jones. During the hearing, he indicated he wanted his business receipts and continuing education certificates returned. Nichter also clarified that reproducing those missing business receipts would cost him $10,000. Furthermore, in its Order, the trial court recognized that Edward Jones "refused [Nichter] access to his personal records," but then nonetheless imposed liability for "any adverse tax consequences." (Appellant's App p. 16). Accordingly, we conclude that Edward Jones made a *prima facie* showing of reversible error. *See McGill*, 801 N.E.2d at 1251. Therefore, we reverse and remand to the trial court with instruction to enter judgment limiting Edward Jones' liability to Nichter's disallowed non-reimbursed business deductions resulting from his inability to substantiate the deduction with receipts.

IV. *Tax Years*

Lastly, Edward Jones argues that the trial court erred by imposing liability for adverse tax consequences Nichter may suffer for tax years 2004 through 2010. However, as claimed by Edward Jones and substantiated by the record, Nichter's employment with the company was from August 1, 1998 through November 19, 2004. Therefore, Edward Jones requests this court to limit its liability for tax years related to its employment relationship with Nichter. Again, we agree.

While Edward Jones recognizes that Nichter may be audited in the future and may be assessed additional tax liabilities for the tax years when he was employed by Edward Jones, nevertheless, the company cannot be held responsible for tax years completely unrelated to its relationship with Nichter. Thus, we reverse and remand with instruction to enter judgment reflecting the proper tax years of 1998 through 2004.

CONCLUSION

Based on the foregoing, we find that the trial court's judgment potentially exceeded its statutory authority and monetary jurisdictional limit of $10,000. Also, the judgment erroneously imposed an unlimited liability on Edward Jones for any adverse tax consequences suffered by Nichter. Further, the trial court erroneously imposed liability for tax years that are unrelated to Nichter's employment relationship with Edward Jones.

Reversed and remanded with instructions.

BAILEY, J., and MAY, J., concur.